

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

BMS SETTLEMENT

Judge Patti B. Saris

**DECLARATION OF WELLS G. WILKINSON**

I, Wells G. Wilkinson, under penalty of perjury pursuant to 28 U.S.C. 1746, declare as follows:

1. I state the following based upon my personal knowledge.
2. I am an attorney licensed to practice by the State of Massachusetts since 2006. I am presently, and have been since 2006, in good standing with the Supreme Judicial Court of Massachusetts.
3. I am currently, and have been since February of 2009, the Director of the Prescription Access Litigation (PAL), a project of the national consumer advocacy organization Community Catalyst in Boston, Massachusetts. From April 2008 until February 2009 I served as the Associate Director of PAL.
4. PAL is a national coalition of more than 130 organizations, including consumers, seniors, health care, labor, legal services, women's health, and human services groups in 36 states and the District of Columbia. PAL's mission is to make prescription drug prices more affordable for consumers. We seek to accomplish this mission through public education and fostering class action litigation

challenging illegal pricing tactics and deceptive marketing by drug companies and other pharmaceutical industry players.

5. In May 2009, I was asked by Sean Matt of Hagens Berman Sobol Shapiro LLP to serve as allocation co-counsel representing the interests of the consumers who would be covered by the BMS AWP Settlement in the litigation titled *In re: Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, Civ. No. 01-CV-12257-PBS. Jeffrey Goldenberg also served as allocation co-counsel representing the interests of the consumers.
6. The allocation agreement was negotiated in person on June 22, 2009, at the offices of mediator Eric D. Green (Resolutions LLC, 222 Berkeley Street, Suite 1060, Boston, Massachusetts 02116.)
7. At or before this negotiation, I was provided with information by Class Counsel that the proposed settlement by Bristol-Meyers Squibb (“BMS”) included the following terms:
  - a. Certification of the following class of:
    - i. Consumers, referred to as ‘class 1 consumers’ who are Medicare Part-B beneficiaries, that made a co-payment;
    - ii. Consumers referred to as ‘class 3 consumers’ who were not Medicare Part-B beneficiaries who made a payment or copayment;
    - iii. Third Party Payors nationwide, referred to as ‘class 2 TPPs’, which provide medigap insurance for such Part-B beneficiaries, that made a payment, and;
    - iv. Third Party Payors nationwide, referred to as ‘class 3 TPPs’, that made a payment outside of the Medicare Part-B context,

where such payment was based on AWP for the following seven BMS drugs: Blenoxane, Cytoxan, Etopophos, Paraplatin, Rubex, Taxol and Vepesid.

- b. Class period of January 1, 1991 through December 31, 2004.
- c. Creation of a \$19,000,000 common fund for the payment of valid claims to cover the cost of notice and administration of the settlement, and attorneys' fees, with an additional amount of up to \$1,000,000 paid by BMS to cover half of the costs of notice to the classes.

8. Estimates of potential damages scenarios to the Classes for the BMS drugs at issue, as calculated by class counsels' expert, Dr. Hartman, were provided before the mediation. See "Table 1: BMS Nominal Damages Summary By Scenario" by Dr. Hartman, attached hereto as Exhibit A. During the mediation these estimates were seen by all participants as the most accurate information concerning the impact upon the consumer class members.

9. The interests of third-party payors ("TPPs") were represented by Geoffrey M. Horn of Lowey Dannenberg Cohen & Hart in these negotiations.

10. In the mediated negotiations, Attorney Goldenberg and I vigorously represented the interests of consumers in the allocation.

11. Based upon the available data provided, the potential size and proportion of consumer damages was between 15.4% of \$30,763,654 under "Scenario 1" and 23.4% of \$10,479,670 under "Scenario 2". In light of this, the allocation of 23% of the settlement to consumers fairly represents the upper range of estimated consumer damages.

12. Subsequent to these negotiations, the final settlement proposal provides the following benefits to consumers:
  - a. all funds allocated to consumers are reserved to compensate consumers, and no consumer allocated funds were allowed to spill-over to pay any TPP claims.
  - b. the potential payment to each consumer who has filed a claim will be modified based upon the degree of price manipulation, or AWP to actual cost spread, by BMS. The potential to receive ‘treble’ damages was included in the notice, so as to provide incentive for the consumers to file claims. Consumer claims are incentivized through trebling of damages for certain drugs that experienced the highest spreads causing increased costs to consumers.
13. I have been informed by Class Counsel as follows:
  - a. that approximately 13,000 to 16,000 consumer claims have been filed based upon information identifying these potential claimants obtained from the Centers for Medicare and Medicaid Services (“CMS”) related to corroborating government payments for the drugs at issue under Medicare Part-B.
  - b. that the total amount of consumer claims, exceeds the amount of funds available for consumers, necessitating a pro-rata reduction of consumer claims to an amount that is approximately 75% of the consumer’s damages, a significant proportion of their damages.
14. As consumer allocation co-counsel representing the interests of consumers, I am of the opinion that the allocation negotiations and the subsequent settlement details overall are fair, reasonable and adequate.

So declared this 14<sup>th</sup> day of March, 2011, Boston, Massachusetts.

**/s/ Wells G. Wilkinson**

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Wells G. Wilkinson  
Director, Prescription Access Litigation  
30 Winter Street  
Boston, MA 02108

## **EXHIBIT A**

**Table 1: BMS Nominal Damages Summary by Scenario**

Class	Scenario 1 (Entire US)		Scenario 2 (Class States)	
	Total Damages	% of Total	Total Damages	% of Total
Class 1	\$4,501,102	14.6%	\$2,367,849	22.6%
Class 2	\$16,512,163	53.7%	\$5,395,656	51.5%
Class 3 (TPPs)	\$9,506,629	30.9%	\$2,631,671	25.1%
Class 3 (Consumers)	\$243,760	0.8%	\$84,494	0.8%
<b>Total</b>	<b>\$30,763,654</b>		<b>\$10,479,670</b>	

## Notes:

Includes calculation or estimation of damages from 1991 to 2003.

See Table 4 for a list of Class states and statute of limitation time periods included in Scenario 2.

Table 2: Scenario 1: Total National BMS Nominal Damages by Class (50 States + DC)

## Class 1

Drug	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Blenoxane	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cytoxan	\$0	\$0	\$2,026	\$25,552	\$46,596	\$87,806	\$141,189	\$155,755	\$158,627	\$141,933	\$97,547	\$94,761	\$111,414	\$1,063,206
Etopophos	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Paraplatin	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Rubex	\$0	\$0	\$0	\$3,324	\$16,077	\$15,125	\$5,611	\$3,029	\$2,103	\$4,084	\$0	\$147	\$0	\$49,500
Taxol	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$614,016	\$614,016	\$1,228,032
Vepesid	\$0	\$0	\$9,328	\$61,263	\$246,939	\$492,778	\$408,205	\$262,308	\$243,381	\$0	\$127,385	\$163,389	\$145,387	\$2,160,364
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$11,354</b>	<b>\$90,139</b>	<b>\$309,613</b>	<b>\$595,708</b>	<b>\$555,006</b>	<b>\$421,093</b>	<b>\$404,110</b>	<b>\$146,017</b>	<b>\$224,932</b>	<b>\$872,313</b>	<b>\$870,817</b>	<b>\$4,501,102</b>

## Class 2

Drug	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Blenoxane	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cytoxan	\$0	\$0	\$7,433	\$93,738	\$170,936	\$322,113	\$517,948	\$571,384	\$581,917	\$520,677	\$357,847	\$347,630	\$408,718	\$3,900,342
Etopophos	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Paraplatin	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Rubex	\$0	\$0	\$0	\$12,195	\$58,980	\$55,485	\$20,584	\$11,112	\$7,716	\$14,982	\$0	\$538	\$0	\$181,591
Taxol	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,252,499	\$2,252,499	\$4,504,998
Vepesid	\$0	\$0	\$34,219	\$224,741	\$905,890	\$1,807,740	\$1,497,490	\$962,271	\$892,834	\$0	\$467,309	\$599,389	\$533,349	\$7,925,232
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$41,652</b>	<b>\$330,674</b>	<b>\$1,135,806</b>	<b>\$2,185,338</b>	<b>\$2,036,023</b>	<b>\$1,544,767</b>	<b>\$1,482,467</b>	<b>\$535,660</b>	<b>\$825,156</b>	<b>\$3,200,055</b>	<b>\$3,194,566</b>	<b>\$16,512,163</b>

Table 2: Scenario 1: Total National BMS Nominal Damages by Class (50 States + DC)

## Class 3 (TPPs)

Drug	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Blenoxane	\$0	\$0	\$0	\$0	\$0	\$91,156	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$91,156
Cytoxan	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Etopophos	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Paraplatin	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Rubex	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Taxol	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,766,839	\$0	\$0	\$6,766,839
Vepesid	\$0	\$0	\$298,635	\$2,350,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,648,635
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$298,635</b>	<b>\$2,350,000</b>	<b>\$0</b>	<b>\$91,156</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$6,766,839</b>	<b>\$0</b>	<b>\$0</b>	<b>\$9,506,629</b>

## Class 3 (Consumers)

Drug	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Blenoxane	\$0	\$0	\$0	\$0	\$0	\$2,337	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,337
Cytoxan	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Etopophos	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Paraplatin	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Rubex	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Taxol	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$173,509	\$0	\$0	\$173,509
Vepesid	\$0	\$0	\$7,657	\$60,256	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$67,914
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$7,657</b>	<b>\$60,256</b>	<b>\$0</b>	<b>\$2,337</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$173,509</b>	<b>\$0</b>	<b>\$0</b>	<b>\$243,760</b>

## Notes:

Damages are zero from 1991-1992 either due to extrapolation methods resulting in zero damages or BMS documentation that suggests no damages in those years.

Class 3 damages are zero in 2002-2003 because Taxol was multisource as of 2001, which therefore was the last year of damages.

**Table 3: Scenario 2: Total BMS Nominal Damages by Class for Certified Class States****Class 1 (40 Class States)**

Drug	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Blenoxane	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cytoxan	\$0	\$0	\$7	\$94	\$172	\$11,120	\$26,344	\$71,053	\$108,916	\$111,964	\$79,432	\$77,164	\$90,724	\$576,989
Etopophos	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Paraplatin	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Rubex	\$0	\$0	\$0	\$12	\$59	\$1,915	\$1,047	\$1,382	\$1,444	\$3,222	\$0	\$119	\$0	\$9,201
Taxol	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$499,991	\$499,991	\$999,982
Vepesid	\$0	\$0	\$34	\$226	\$909	\$62,407	\$76,166	\$119,660	\$167,110	\$0	\$103,729	\$133,047	\$118,388	\$781,677
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$42</b>	<b>\$332</b>	<b>\$1,140</b>	<b>\$75,442</b>	<b>\$103,558</b>	<b>\$192,094</b>	<b>\$277,470</b>	<b>\$115,185</b>	<b>\$183,161</b>	<b>\$710,322</b>	<b>\$709,103</b>	<b>\$2,367,849</b>

**Class 2 (24 Class States)**

Drug	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Blenoxane	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cytoxan	\$0	\$0	\$0	\$0	\$0	\$13,461	\$27,351	\$167,310	\$257,212	\$266,782	\$189,078	\$183,679	\$215,957	\$1,320,831
Etopophos	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Paraplatin	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Rubex	\$0	\$0	\$0	\$0	\$0	\$2,319	\$1,087	\$3,254	\$3,410	\$7,677	\$0	\$284	\$0	\$18,030
Taxol	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,190,169	\$1,190,169	\$2,380,337
Vepesid	\$0	\$0	\$0	\$0	\$0	\$75,545	\$79,077	\$281,767	\$394,640	\$0	\$246,915	\$316,703	\$281,809	\$1,676,457
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$91,325</b>	<b>\$107,516</b>	<b>\$452,331</b>	<b>\$655,262</b>	<b>\$274,459</b>	<b>\$435,993</b>	<b>\$1,690,835</b>	<b>\$1,687,935</b>	<b>\$5,395,656</b>

**Table 3: Scenario 2: Total BMS Nominal Damages by Class for Certified Class States****Class 3 TPPs (19 Class States)**

Drug	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Blenoxane	\$0	\$0	\$0	\$0	\$0	\$3,809	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$3,809
Cytoxan	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Etopophos	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Paraplatin	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Rubex	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Taxol	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,627,861	\$0	\$0	\$2,627,861
Vepesid	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$3,809</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,627,861</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,631,671</b>

**Class 3 Consumers (27 Class States)**

Drug	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Blenoxane	\$0	\$0	\$0	\$0	\$0	\$191	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$191
Cytoxan	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Etopophos	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Paraplatin	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Rubex	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Taxol	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$84,053	\$0	\$0	\$84,053
Vepesid	\$0	\$0	\$28	\$222	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$250
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$28</b>	<b>\$222</b>	<b>\$0</b>	<b>\$191</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$84,053</b>	<b>\$0</b>	<b>\$0</b>	<b>\$84,494</b>

## Notes:

Damages are zero from 1991-1992 either due to extrapolation methods resulting in zero damages or BMS documentation that suggests no damages in those years.

Class 3 damages are zero in 2002-2003 because Taxol was multisource as of 2001, which therefore was the last year of damages.

**Table 4: List of Class States and Statutes of Limitations**

States	Statute of Limitation (Years)*	Class 1	Class 2	Class 3 (TPPs)	Class 3 (Consumers)
Alabama					
Alaska					
Arizona	1	X	X		
Arkansas	5	X	X	X	X
California	4	X	X		
Colorado	3	X	X	X	X
Connecticut	3	X	X	X	X
Delaware	3	X	X	X	X
District of Columbia	3	X			X
Florida	4	X	X	X	X
Georgia					
Hawaii	4	X			X
Idaho	4	X	X	X	X
Illinois	3	X	X	X	X
Indiana	2	X			
Iowa					
Kansas	3	X			X
Kentucky					
Louisiana					
Maine	6	X	X	X	X
Maryland	3	X			
Massachusetts	4	X			
Michigan	6	X			X
Minnesota	4	X	X	X	X
Mississippi					
Missouri	5	X			X
Montana					
Nebraska	4	X	X	X	X
Nevada	4	X	X	X	X
New Hampshire	3	X	X	X	X
New Jersey	6	X	X	X	X
New Mexico	4	X	X	X	X
New York	3	X	X	X	X
North Carolina	4	X	X		
North Dakota	6	X	X	X	X
Ohio					
Oklahoma	3	X			X
Oregon	1	X			
Pennsylvania	6	X			
Rhode Island	10	X			X
South Carolina	3	X			
South Dakota	2	X	X		
Tennessee	5	X			
Texas	2	X	X	X	X
Utah					
Vermont	6	X	X	X	X
Virginia					
Washington	4	X	X	X	X
West Virginia	2	X			X
Wisconsin	3	X			
Wyoming	1	X	X		
<b>Total # of States</b>		<b>40</b>	<b>24</b>	<b>19</b>	<b>27</b>

\* I.e., the number of years prior to 2002 that are included in damages.

2002 and 2003 are included in damages for all Class states.

**CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on March 14, 2011, a copy to LEXISNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman

Steve W. Berman